

Legislative Council—No 43

As received from the House of Assembly and read a first time, 28 October 2014

South Australia

Statutes Amendment (Superannuation) Bill 2014

A BILL FOR

An Act to amend the *Parliamentary Superannuation Act 1974*, the *Police Superannuation Act 1990*, the *Southern State Superannuation Act 2009* and the *Superannuation Act 1988*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Superannuation) Act 2014*.

2—Amendment provisions

- 5 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Parliamentary Superannuation Act 1974*

3—Insertion of section 23AAE

After section 23AAD insert:

23AAE—Payment of Division 293 tax

- 5 (1) For the purposes of facilitating the payment of Division 293 tax, the Board may pay an amount on behalf of a member to the Commissioner of Taxation, or to the member, as required by, and in accordance with, the requirements of Schedule 1 Division 135 of the *Taxation Administration Act 1953* of the Commonwealth.
- 10 (2) If the Board makes a payment to or on behalf of a member under subsection (1), the Board must debit the amount of the payment against the member's Government contribution account or, if the credit balance of the member's Government contribution account is not sufficient to make the payment, the member's contribution
- 15 account, rollover account or co-contribution account.
- (3) In this section—
- Division 293 tax* has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

Part 3—Amendment of *Police Superannuation Act 1990*

20 4—Insertion of section 35B

After section 35A insert:

35B—Commutation to pay Division 293 tax

- 25 (1) The purpose of this section is to facilitate the payment of amounts by the Board to the Commissioner of Taxation as required under Schedule 1 Subdivision 135-C of the *Taxation Administration Act* in connection with Division 293 tax payable by contributors.
- (2) If a Division 293 release authority for a contributor who is entitled to a pension is given to the Board in accordance with Schedule 1 Subdivision 135-B of the *Taxation Administration Act*, the Board
- 30 must—
- (a) commute so much of the contributor's pension as is necessary to provide a lump sum equal to the release amount required to be paid by the Board in respect of the contributor under Schedule 1 section 135-75 of the *Taxation Administration Act*; and
- 35 (b) pay the lump sum resulting from the commutation to the Commissioner of Taxation.

(3) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

(4) If the Board is satisfied that—

5 (a) a contributor is entitled to commute the whole of his or her pension under section 35 and has done so except for a part that the contributor wishes to retain for the purpose of commutation under this section in order to meet the contributor's liability for Division 293 tax; and

10 (b) after commutation under this section for that purpose there will still be a part of the pension remaining uncommuted; and

15 (c) the part of the pension originally retained for commutation under this section was a reasonable estimate of the amount of the pension that would be required for that purpose,

the Board will, on the application of the contributor made after a Division 293 release authority for the contributor is given to the Board, commute the remaining uncommuted part of the pension using the factors applicable under section 35.

20 (5) In this section—

Division 293 release authority means a release authority issued by the Commissioner of Taxation under Schedule 1 section 135-10 of the Taxation Administration Act;

25 ***Division 293 tax*** has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

Taxation Administration Act means the *Taxation Administration Act 1953* of the Commonwealth.

5—Amendment of section 52—Regulations

Section 52(3)—delete subsection (3) and substitute:

30 (3) Without limiting subsection (1), the regulations may—

35 (a) make any provision that is necessary in view of the provisions of Part VIII B of the *Family Law Act 1975* of the Commonwealth, including by modifying the operation of any provision of this Act in prescribed circumstances in order to ensure that this Act operates in a manner that is consistent with, and complementary to, the requirements of that Commonwealth Act; and

40 (b) prescribe the salary, or an amount to be taken to be the salary, of a contributor for the purpose of determining contributions or benefits in relation to the contributor despite any provision to the contrary in this Act.

Part 4—Amendment of *Southern State Superannuation Act 2009*

6—Amendment of section 3—Interpretation

Section 3(1), definition of *participating employer*—delete "—see section 6" and substitute:

5 means an employer with whom the Board has entered into an arrangement
under section 6

7—Amendment of section 19—Membership of scheme

Section 19(1)—delete paragraph (a) and substitute:

10 (a) in relation to whom the Crown, or an agency or instrumentality of
the Crown—

(i) is liable to pay a superannuation guarantee charge under the
Commonwealth Act; or

15 (ii) is not liable to pay a superannuation guarantee charge under
the Commonwealth Act but pays an amount to the Treasurer
as if it were required to pay the amount under section 21; or

8—Amendment of section 28—Confidentiality

Section 28(1)—after paragraph (c) insert:

20 (ca) to a person responsible for the administration of a prescribed scheme
(within the meaning of section 21) for purposes related to the
administration of this Act or the prescribed scheme; or

9—Amendment of Schedule 1—Transitional provisions

Schedule 1—after clause 16A insert:

16B—Recognition of prior membership

If—

25 (a) the Crown, or an agency or instrumentality of the Crown,
has, before the commencement of paragraph (a)(ii) of
section 19(1) (as inserted by the *Statutes Amendment*
(Superannuation) Act 2014), paid an amount to the
Treasurer in relation to a person as if it were required to pay
30 the amount under section 21 or under section 26 of the
repealed Act; but

35 (b) the person was not, at the time of the payment, a member of
the Triple S scheme because the Crown, agency or
instrumentality was not liable to pay a superannuation
guarantee charge under the Commonwealth Act in relation
to the person,

the person will be taken to have become a member of the Triple S
scheme on the day on which the first such payment was made.

Part 5—Amendment of *Superannuation Act 1988*

10—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *dependency* insert:

Division 293 release authority means a release authority issued by the Commissioner of Taxation under Schedule 1 section 135-10 of the Taxation Administration Act;

Division 293 tax has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

- (2) Section 4(1)—after the definition of *surcharge notice* insert:

Taxation Administration Act means the *Taxation Administration Act 1953* of the Commonwealth;

11—Insertion of section 32E

After section 32D insert:

32E—Payment of Division 293 tax

- (1) The purpose of this section is to facilitate the payment of amounts by the Board to the Commissioner of Taxation as required under Schedule 1 Subdivision 135-C of the Taxation Administration Act in connection with Division 293 tax payable by contributors.
- (2) If a Division 293 release authority for a contributor who is entitled to a benefit is given to the Board in accordance with Schedule 1 Subdivision 135-B of the Taxation Administration Act, the Board must pay to the Commissioner of Taxation from the contributor's benefit an amount equal to the release amount required to be paid by the Board in respect of the contributor under Schedule 1 section 135-75 of the Taxation Administration Act.
- (3) If a Division 293 release authority has not been issued in relation to a contributor who has, or will have, a liability to pay Division 293 tax and has become, or will shortly become, entitled to a benefit, the contributor may—
- (a) estimate the amount of Division 293 tax he or she is, or will be, liable to pay (the *estimated amount*); and
 - (b) request the Board, in the approved form, to—
 - (i) withhold from the contributor's benefit an amount equal to the estimated amount (the *withheld amount*); and
 - (ii) pay the balance of the benefit to the contributor (being, in the case of a benefit to which the contributor is yet to become entitled, a payment after the entitlement arises),

and the Board must comply with the contributor's request unless it is not satisfied that the contributor has, or will have, a liability to pay Division 293 tax.

5 (4) If a contributor has made a request under subsection (3)(b), the Board must, on receipt of a Division 293 release authority in respect of the contributor—

10 (a) pay to the Commissioner of Taxation from the withheld amount an amount equal to the release amount required to be paid by the Board in respect of the contributor under Schedule 1 section 135-75 of the Taxation Administration Act; and

(b) pay to the contributor the balance (if any) of the withheld amount.

15 (5) An amount withheld under this section—

(a) must be paid by the Treasurer into the Consolidated Account or a special deposit account established by the Treasurer for that purpose; and

20 (b) will be charged against the relevant contributor's contribution account (to the extent possible) as if the amount had been paid to the contributor; and

(c) will be credited with interest at a rate determined by the Treasurer; and

(d) must be paid—

25 (i) to the Commissioner of Taxation or the contributor in accordance with subsection (4); or

(ii) to the contributor at the direction of the Board if—

30 (A) a Division 293 release authority in respect of the contributor has not been given to the Board within 2 years of the amount being withheld; or

(B) the Board considers, at any time, there is other good reason for doing so.

12—Insertion of section 40AB

After section 40A insert:

35 **40AB—Commutation to pay Division 293 tax**

(1) The purpose of this section is to facilitate the payment of amounts by the Board to the Commissioner of Taxation as required under Schedule 1 Subdivision 135-C of the Taxation Administration Act in connection with Division 293 tax payable by contributors.

(2) If a Division 293 release authority for a contributor who is entitled to a pension is given to the Board in accordance with Schedule 1 Subdivision 135-B of the Taxation Administration Act, the Board must—

5 (a) commute so much of the contributor's pension as is necessary to provide a lump sum equal to the release amount required to be paid by the Board in respect of the contributor under Schedule 1 section 135-75 of the Taxation Administration Act; and

10 (b) pay the lump sum resulting from the commutation to the Commissioner of Taxation.

(3) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

15 (4) If the Board is satisfied that—

20 (a) a contributor is entitled to commute the whole of his or her pension under section 40 and has done so except for a part that the contributor wishes to retain for the purpose of commutation under this section in order to meet the contributor's liability for Division 293 tax; and

 (b) after commutation under this section for that purpose there will still be a part of the pension remaining uncommuted; and

25 (c) the part of the pension originally retained for commutation under this section was a reasonable estimate of the amount of the pension that would be required for that purpose,

30 the Board will, on the application of the contributor made after a Division 293 release authority for the contributor is given to the Board, commute the remaining uncommuted part of the pension using the factors applicable under section 40.